IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10674 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHESH ALIAS BECHAR MANUBHAI CHUNARA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 10674 of 2003

MR ANIL S DAVE for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

MS MITA PANCHAL Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 10/09/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed

against him by the Police Commissioner, Ahmedabad City, on 17.12.2002 under the exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short).

As it appears from the grounds served upon the present petition and placed on record, the detaining authority placed reliance on three offences registered against the petitioner on 28.2.2002, 14.4.2002 and 14.9.2002. For the offences registered against the petitioner on 28.2.2002, it was alleged that in pursuance of the riots, on account of incident occurred at Godhra, at least 5000 persons attacked on shops, religious places and committed rioting. On 28.2.2002, the offence came to be registered in pursuance of these incidents under sec.143, 147, 149, 295, 395, 435, 436,427, 452, 337, 336, 118, 153(A)(2) of IPC and under sec. 135(1) of the Bombay Police Act. So far as the offence committed by the petitioner on 14.4.2002 is concerned, in association of other accomplices the petitioner intercepted ST Bus and attacked the passengers by stick and stone throwing near Kamnath Mahadev. The offence came to be registered under sec. 143, 147, 148, 337, 427 and 504 of IPC. The last and third offence which registered on 14.9.2002 against the petitioner, it was alleged that while the petitioner was attempted to be arrested by the police, in resistance, the petitioner bite on the left leg of the Constable. In addition to this incident, the detaining authority also took into consideration in-camera statements of two witnesses recorded on 6.12.2002 and 8.12.2002 by proposing authority and verified by the detaining authority on 13.12.2003. Accordingly, an incident occurred on 24.11.2002 was recorded in one of the in-camera statement, wherein the petitioner and his accomplishes demanded Rs. 500/ for installments from the witness who was doing the business in the locality and on refusal, the witness was beaten by the petitioner and took out Rs. 970/- from the counter of the shop. The said witness was taken out of the shop. Though the crowd was gathered, nobody rescued the witness on account of fear of the petitioner. The crowd was dispersed, and therefore, there was terror and fear in the locality. The next incident is of 1.12.2002 wherein the witness was accosted by the petitioner and his accomplishes and demand of money was made on the ground that the petitioner wanted to pay his advocate. On refusal, the witness was beaten. Rs. 600/- were extorted from the witness. Like earlier incident, there was terror and fear in the locality. From the above material, the detaining authority come to the conclusion that the

petitioner was a dangerous person within the meaning of the PASA Act and was required to be detained and hence, the order came to be passed impugned in this petition.

Ld. advocate Mr. Kamen Shukla for the petitioner and Ms. Mita Panchal ld. AGP were heard at length. Ld. AGP Ms. Panchal places on record the affidavit in reply of detaining authority which is taken into consideration.

Various contentions raised on behalf of the petitioner and vehemently controverted by the ld. AGP. On careful scrutiny of the record and from rival contentions it clearly appears whether the detaining authority applied its mind to the aspect whether the public order was disturbed. My attention was drawn to the offence registered against the petitioner by ld. AGP. True, it is that two offences which came to be registered against the petitioner on 28.2.2002 and 14.4.2002 pertains to the disturbance of public order, while third offence which came to be registered on 14.9.2002 against the petitioner under sec. 332 of IPC which could hardly be said to be disturbing the public order. If the facts are taken into consideration in this perspective, it appears that the last offence if at all came to be registered against the petitioner which includes elements of disturbance of public order was on 14.4.2002. if the statement of the witnesses recorded in-camera is taken into account and considered on its face value, one can hardly come to the conclusion that any of the two incidents resulted into disturbance of public order. At the most, they are incidents of individual disputes and may be taken care of by ordinary law and can be labelled as disturbance of law and order. Therefore, if two offences registered against the petitioner on 28.2.2002 and 14.4.2002 are the incidents taken to be prejudicial to maintenance of public order then the order passed on 17.12.2002 undoubtedly suffers from vice of passing the order as late as eight months and required to be quashed on the ground of delay. Though my attention was also drawn to para-13 of the affidavit in reply filed by the detaining authority, but the facts remain that the last offence with reference to the disturbance of public order came to be registered against the petitioner on 14.4.2002 and the order of detention came to be passed on 17.12.2002, while the other two unreported incidents could hardly be said to be prejudicial to maintenance of public order. Therefore, on this ground, the order impugned is required to be quashed and set aside.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 17.12.2002 by the Police Commissioner, Ahmedabad City under the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs.

(J.R. VORA, J.)

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